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2.3.6 UK withdrawal from the EU and its implications on asylum



Following a referendum in June 2016 when British people voted for the withdrawal of the United Kingdom (UK) from the EU,[215] in March 2017, the UK communicated to the President of the European Council its intention to withdraw from the EU. A negotiation process on withdrawal ensued, as foreseen in the Treaty on the European Union, Article 50.[216] On 17 October 2019, EU and UK negotiators reached an agreement on the Withdrawal Agreement and a Political Declaration on the future relationship. The withdrawal agreement entered into force on 1 February 2020,as of which date the UK has left the EU. The withdrawal agreement also provided for a transition period until 31 December 2020, during which EU law still applied to and within the UK. As of 1 January 2021, the UK is no longer bound by EU law and has become to all effect a third country in relation to the EU.[217]

Neither the withdrawal agreement nor the political declaration address irregular migration and asylum in detail. In the political declaration on the future relationship, the EU and the UK agreed to cooperate in tackling illegal migration, including its drivers and consequences, while recognising the need to protect the most vulnerable. Such cooperation includes: i) operational cooperation with Europol to combat organised crime; ii) cooperation with Frontex to strengthen the EU's external borders; and iii) dialogue on shared objectives and cooperation, including in third countries and international fora, to address illegal migration upstream.[218] According to Article 155 of the withdrawal agreement, the UK will keep contributing to the EU Emergency Trust Fund for Africa and to the Facility for Refugees in Turkey. On the latter, the UK will also participate in the relevant bodies related to the facility.[219]

Upon the UK withdrawal from the EU, international legal instruments relevant to asylum, such as the 1951 Refugee Convention and the European Convention on Human Rights (ECHR) are, of course, still applicable in the UK. However, EU law relevant to asylum is no longer automatically applicable, unless retained in the domestic legal system.[220] Importantly, the Dublin III Regulation has been repealed in the UK and, as of 1 January 2021, the provisions foreseen in the regulation have ceased to apply, including the specific clause on family reunification. As a result, now under British law, family reunification is possible when the person already living in the UK has an international protection status (refugee status or subsidiary protection), which excludes reunification for asylum applicants. Moreover, unaccompanied minors will only be able to reunite with their parents and not with other family members.[221]

The UK can no longer return asylum applicants who travelled to the UK from an EU Member State, under the rules of the Dublin III Regulation. On 31 December 2020, the UK Home Office issued an updated guidance allowing “an inadmissibility decision to be taken on the basis of a person’s earlier presence in or connection to a safe third country, even if that particular country will not immediately agree to the persons return. More significantly, if someone is inadmissible, the new provisions permit their removal to any safe third country that will take them (not just the specific country or countries through which they travelled or have a connection)”.[222] The new inadmissibility rules apply to adult asylum applicants who submitted a claim after 1 January 2021 but do not apply to unaccompanied minors.[223]

Finally, as a consequence of the withdrawal, the UK no longer has access to EU funding for asylum and immigration initiatives, which in the past was used to support activities related to asylum, refugee resettlement, immigration enforcement and NGO-led projects focusing on integration.[224]

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